

By Hon. Phillip E. Harter

The Estates and Protected Individuals Code (EPIC), Michigan's new probate code, took effect April 1, 2000. As a service to members of the State Bar, selected questions and answers regarding EPIC will be published in this column over the next several months. These items are taken from the almost 400 inquiries and responses contained on the EPIC Question and Answer website at <http://courts.co.calhoun.mi.us>.

You can submit questions regarding EPIC via e-mail to pharter@internet1.net. They will be answered by a panel of experts consisting of probate attorneys, judges, probate registers, and other court staff.

Question

Do life insurance, joint property, and other nonprobate assets become subject to

creditor's claims when there is no probate or trust estate?

Answer

Apart from the creation of these interests being subject to the Fraudulent Conveyance Act, they would not be subject to creditor's claims under EPIC. Assets in a revocable trust have been subject to claims of the settlor's creditors under Michigan law both during lifetime and at death. MCL 700.7501 is a recognition of that law. EPIC does not generally expand the right of creditors to other property arrangements. However, the reporter's comment to MCL 700.3805 points out that MCL 700.3805(3) also directs the personal representative to apportion the burden of that deficiency between all transferees of nonprobate assets (if the nonprobate property is liable for claims, such as assets subject

to a general power of appointment), not just a revocable trust.

Question

Is a personal representative required to prepare and file tax returns?

EPIC's provisions make it clear that the personal representative is responsible for the payment of taxes owed by the estate.

Answer

EPIC's provisions make it clear that the personal representative is responsible for the payment of taxes owed by the estate. MCL 700.3709 provides in part:

The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection, and preservation of, the estate in the personal representative's possession.

Taxes that have a priority over general estate claims pursuant to MCL 700.3805 are also a claim against the estate. A taxing authority is a creditor whose existence is usually reasonably ascertainable by the personal representative. Unless the claim is barred, a personal representative is required to pay claims allowed against the estate pursuant to MCL 700.3807. Failure to pay such a claim or payment of other claims over such a priority claim could subject a personal representative to liability. ♦

Hon. Phillip E. Harter is a judge in the Calhoun County Probate Court and is secretary of the State Bar Probate and Estate Planning Section. Judge Harter is a frequent lecturer for ICLE on probate topics and the editor of ICLE's Michigan Guardianship and Conservatorship Handbook.